

**FILED**

**APR 30 2012**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**INDIANA UTILITY  
REGULATORY COMMISSION**

**VERIFIED PETITION OF DUKE ENERGY )  
INDIANA, INC. (1) SEEKING APPROVAL OF AN )  
ONGOING REVIEW PROGRESS REPORT )  
PURSUANT TO IC 8-1-8.5 AND 8-1-8.7; (2) )  
AUTHORITY TO REFLECT COSTS INCURRED )  
FOR THE EDWARDSPORT INTEGRATED )  
GASIFICATION COMBINED CYCLE )  
GENERATING FACILITY ("IGCC PROJECT") ) CAUSE NO. 43114-IGCC4S1  
PROPERTY UNDER CONSTRUCTION IN ITS )  
RATES AND AUTHORITY TO RECOVER )  
APPLICABLE RELATED COSTS THROUGH ITS )  
INTEGRATED COAL GASIFICATION COMBINED )  
CYCLE GENERATING FACILITY COST )  
RECOVERY ADJUSTMENT, STANDARD )  
CONTRACT RIDER NO. 61 PURSUANT TO IC 8-1- )  
8.8-11 AND -12 , (3) ESTABLISHMENT OF A )  
SUBDOCKET PROCEEDING TO REVIEW THE )  
COST ESTIMATE FOR THE IGCC PROJECT; AND )  
(4) APPROVAL OF A REQUEST TO UPDATE ITS )  
DEPRECIATION RATES FOR PRODUCTION )  
TRANSMISSION, DISTRIBUTION AND GENERAL )  
PLANT AND EQUIPMENT )**

**VERIFIED JOINT PETITION TO REOPEN THE RECORDS IN THIS CAUSE  
FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE RELATING TO A  
SETTLEMENT AGREEMENT REACHED BY LESS THAN ALL PARTIES AND  
SUBMISSION OF SUCH SETTLEMENT AGREEMENT**

Duke Energy Indiana, Inc. ("Duke Energy Indiana"), Nucor Steel-Indiana, a division of Nucor Corporation ("Nucor"), the Duke Energy Indiana Industrial Group ("Industrial Group"), and the Indiana Office of the Utility Consumer Counselor (the "OUCC") (collectively referred to herein as "Settling Parties"), pursuant to 170 IAC 1-1.1-17 and 170 IAC 1-1.1-22, respectfully petition the Commission to reopen the records in Phase I and Phase II of this proceeding to allow for the taking of additional evidence: specifically, the Settlement Agreement reached in this

Cause among the Settling Parties and evidence in support of such Settlement Agreement. The Settlement Agreement, which resolves all issues in Phase I and Phase II of this proceeding, is attached hereto, as Exhibit A.

Contemporaneous with the filing of this Verified Joint Petition, the Settling Parties are also filing with the Commission a Motion for an Attorneys' Conference and for a New Procedural Schedule in this Cause and request such motion be handled on an expedited basis. In support of this Verified Joint Petition, the Settling Parties state as follows:

1. The evidentiary hearings in this proceeding concluded on January 24, 2012, and the records were closed, subject to the filing of post-hearing proposed orders, exceptions and replies.
2. Proposed orders and briefs have not yet been filed, and the Commission has not issued a final order(s) in this Cause.
3. Following the conclusion of the hearings, the Settling Parties re-engaged in settlement discussions. Those discussions resulted in the Settlement Agreement attached hereto as Exhibit A.
4. The Commission's rules provide for the filing and consideration of the Settlement Agreement. Specifically, 170 IAC 1-1.1-17(a) provides "It is the policy of the commission to review and accept appropriate settlements. Nothing contained in this rule shall be construed as precluding parties in a proceeding from submitting, at any time prior to the issuance of a final order in the proceeding, settlement proposals or from requesting a hearing for such purpose."
5. The Commission's rules also provide for the reopening of the evidentiary record to consider the Settlement Agreement and testimony related to the Settlement Agreement. 170 IAC 1-1.1-22(a) states "At any time after the record is closed, but before a final order is issued,

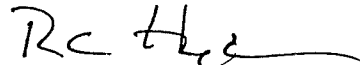
any party to the proceeding may file with the commission and serve upon all parties of record a petition to reopen the proceeding for the purpose of taking additional evidence." Further, 170 IAC 1-1.1-17(b) provides "Settlement agreements by some or all of the parties to a proceeding may be filed with the commission and received into evidence as part of the record of the proceeding."

6. The additional evidence the Settling Parties request that the Commission accept into the record will support the Settling Parties' proposed resolution of all of the issues presented in Phase I and Phase II of this Cause, will not be merely cumulative of evidence that is already in the record, and could not have been reasonably foreseen prior to closing the record (because the settlement discussions resulting in the Settlement Agreement did not recommence until after the close of the record and in fact, having a full record facilitated reaching this Settlement).

7. The Settling Parties respectfully suggest that granting the relief requested in this Verified Petition to reopen the record and take additional evidence is in the public interest and will assist the Commission in reaching a decision on all matters pending in this proceeding.

WHEREFORE, the Settling Parties respectfully petition the Commission to reopen the records and take additional evidence in Phase I and Phase II of this Cause relating to the Settlement Agreement, and for all other appropriate relief.

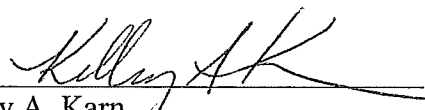
Respectfully submitted,

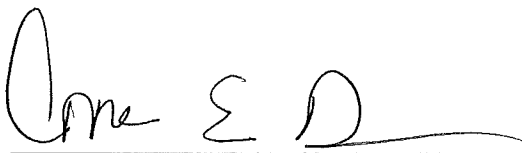


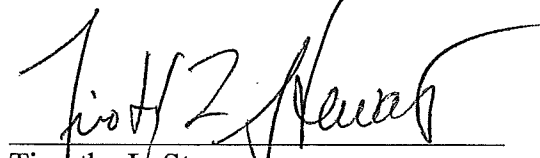
Abby R. Gray

Randall C. Helmen

Indiana Office of Utility Consumer Counselor

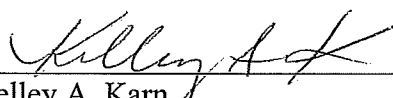
  
Kelley A. Karn  
Attorney for Duke Energy Indiana

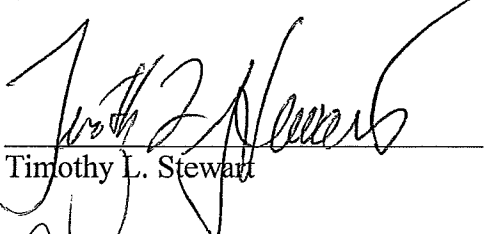
  
Anne E. Becker  
Attorney for Nucor Steel-Indiana

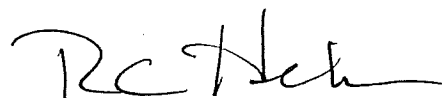
  
Timothy L. Stewart  
John F. Wickes, Jr.  
Attorneys for Duke Industrial Group

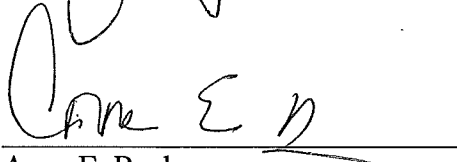
#### VERIFICATION

I, Kelley A. Karn, Timothy Stewart, Randall C. Helmen and Anne Becker, do hereby individually swear and affirm under penalties of perjury, that the representations set forth herein are true and correct to the best of my knowledge, information and belief.

  
Kelley A. Karn

  
Timothy L. Stewart

  
Randall C. Helmen

  
Anne E. Becker

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing motion was mailed, delivered or mailed electronically this 30<sup>th</sup> day of April 2012, to the following:

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Indianapolis, Indiana 46204

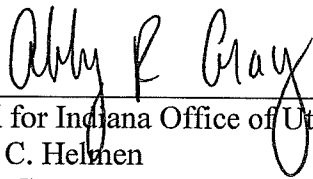
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By:



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## STATE OF INDIANA

## INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF DUKE ENERGY INDIANA, )  
 INC. SEEKING (1) APPROVAL OF AN ONGOING )  
 REVIEW PROGRESS REPORT PURSUANT TO IND. )  
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 REFLECT COSTS INCURRED FOR THE )  
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 ("IGCC PROJECT") PROPERTY UNDER ) CAUSE NO. 43114-IGCC4S1  
 CONSTRUCTION IN ITS RATES AND AUTHORITY )  
 TO RECOVER APPLICABLE RELATED COSTS )  
 THROUGH ITS INTEGRATED COAL )  
 GASIFICATION COMBINED CYCLE GENERATING )  
 FACILITY COST RECOVERY ADJUSTMENT, )  
 STANDARD CONTRACT RIDER NO. 61 PURSUANT )  
 TO IND. CODE §§8-1-8.8-11 AND -12; (3) )  
 ESTABLISHMENT A SUBDOCKET PROCEEDING )  
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 REQUEST TO UPDATE ITS DEPRECIATION )  
 RATES FOR PRODUCTION, TRANSMISSION, )  
 DISTRIBUTION AND GENERAL PLANT AND )  
 EQUIPMENT )

## Settlement Agreement

IURC Cause No. 43114-IGCC4S1 Phase I and Phase II**1. Introduction.**

This Settlement Agreement ("Settlement") is entered into by and between Duke Energy Indiana, Inc. (and its successors), the Indiana Office of the Utility Consumer Counselor ("OUCC"), the Duke Energy Indiana Industrial Group,<sup>1</sup> and Nucor Steel-Indiana (collectively the "Settling Parties"). The Settling Parties agree that this Settlement resolves all disputes, claims, and issues in Indiana Utility Regulatory Commission ("IURC") Cause No. 43114-IGCC4S1, Phases I and II, and all issues relating to the construction costs and allowance for funds used during construction ("AFUDC") costs associated with the Edwardsport IGCC Project

<sup>1</sup> Consisting of Buzzi Unicem USA, Chrysler Group, LLC, Lehigh Cement Company, Marathon Petroleum Company, LLC, Rochester Metal Products Corporation, and USG Corporation.

("Project" or "IGCC Project"). The Settling Parties desire to fully settle all disputes, claims, and issues among them arising out of or relating to these proceedings and the construction of the Project, now and in the future,<sup>2</sup> and do so, among other reasons, to avoid the continued time and expense of further proceedings and the inherent uncertainties and potential outcomes associated with such proceedings. The Settling Parties agree, solely for purposes of this Settlement, that the Construction Costs included in the Hard Cost Cap (plus Additional AFUDC) (as such terms are defined below) are reasonable and necessary and should not be reduced because of any claims of imprudence, fraud, concealment, or gross mismanagement, or related claims. The Settling Parties agree that the record in this proceeding includes substantial evidence that this Settlement is reasonable and will result in just and reasonable rates for Duke Energy Indiana's customers. The Settling Parties further agree that this Settlement is a reasonable compromise and that each Settling Party that filed testimony previously in this Cause will file testimony with the IURC in support of this Settlement, and in such testimony, each such party will explain to the IURC how, in that Settling Party's view, the Settlement is just and reasonable and in the public interest, based on substantial evidence of record.

The Settling Parties agree to work together to achieve approval of this Settlement by July 1, 2012.

## **2. Hard Cost Cap.**

A. The Settling Parties agree that the Construction Costs (defined later in this Section 2) of the Project shall be subject to a "Hard Cost Cap" of \$2.595 billion as of June 30, 2012,<sup>3</sup> for all Indiana ratemaking purposes (base rate cases and rider proceedings) ("the Hard Cost Cap Project Costs").

B. The Settling Parties agree that, until the Hard Cost Cap Project Costs are fully reflected in Duke Energy Indiana's electric rates, Duke Energy Indiana shall be allowed to accrue and recover actual AFUDC (or post-in-service AFUDC, whichever is applicable) on the portion of the \$2.595 billion that has not been reflected in such rates. From and after July 1, 2012, Duke Energy Indiana shall recover actual AFUDC on the Hard Cost Cap Project Costs as follows: until November 30, 2012, 100% of the AFUDC and thereafter, 85% of the AFUDC incurred after such date ("the Additional AFUDC"). Retail AFUDC on the Hard Cost Cap Project Costs is currently accruing at approximately \$9 million per month. There will be no cost recovery from retail electric customers above the retail amounts included in the \$2.595 billion Hard Cost Cap, other than the Additional AFUDC as provided for above, and any force majeure events as defined below.

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<sup>2</sup> Except as specifically provided for in this Settlement.

<sup>3</sup> Reflecting approximately \$2.319 billion in direct costs on a total Company basis and approximately \$276 million in retail jurisdictional (only) AFUDC as of June 30, 2012. The retail jurisdictional portion of these direct costs is approximately \$2.129 billion.

C. The Settling Parties agree that, except for ongoing additions, replacements, and maintenance capital expenditures made separate and apart from and not included in Construction Costs, in future retail electric base rate cases and riders, the portion of revenue requirements attributable to a return on the Project shall equal the original cost of the Project, defined as the Hard Cost Cap Project Costs, including the Additional AFUDC as provided for above, less accumulated depreciation, multiplied by Duke Energy Indiana's authorized weighted cost of capital calculated on an original cost basis.

D. The Settling Parties agree that the IURC should modify the Certificates of Public Convenience and Necessity ("CPCNs") for the IGCC Project to reflect an approved Project cost estimate equal to the Hard Cost Cap Project Costs (\$2.595 billion as of June 30, 2012) plus Additional AFUDC that accrues on that amount on and after July 1, 2012, as described above. Other than as set forth in this Settlement, the Non-Duke Settling Parties agree that they will seek no further rate or regulatory "penalties" relative to the construction and overall final Construction Costs of the Project (plus AFUDC as allowed above); however, the non-Duke Settling Parties shall retain all rights under Indiana law to make arguments and seek relief concerning post-in-service operating performance of the Project.

E. "Construction Costs" of the Project shall be defined in accordance with usual utility practices and in accordance with FERC guidelines and includes all costs required to achieve "final completion," as that term is defined in the December 20, 2007 contract between Duke Energy Indiana and GE (see Attachment A), such as engineering, materials, construction and equipment purchases, capitalized AFUDC (through June 30, 2012), and all start-up and testing, validation and commissioning costs, and costs of repairs and modifications identified during start-up, testing, validation and commissioning and all such costs required whether actually disbursed or only obligated during such period, as well as any costs subsequently incurred to pay claims disallowed or unpaid during such period; except that: "Construction Costs" of the Project and the Hard Cost Cap shall not include normal operating and maintenance ("O&M") expenditures on the Project, which, according to FERC guidelines, begin after the "In-Service Operational Date" and shall not include subsequent ongoing capital spent on the Project for normal capitalized repairs or maintenance expenditures or additional plant and equipment necessary for the continued operation of the Project after the "In-Service Operational Date", unless identified during start-up, testing, validation and commissioning as being necessary to reach "final completion", nor does the cap apply to orders of the Commission approving cost recovery related to carbon capture and storage (including study costs) involving the Project.

F. "In-Service Operational Date" means the first date by which the Project has both (1) been declared in-service in accordance with FERC guidelines as the earlier of the date the asset is placed in operation or is ready for service; and (2) has operated on both natural gas and syngas; provided however that the In-Service Operational Date shall not be prior to September 24, 2012.



G. The Hard Cost Cap Project Costs and Additional AFUDC may only be increased due to an increase in prudently incurred construction costs for the Project caused by a force majeure event beyond the control and without the fault or negligence of Duke Energy Indiana or its suppliers or contractors involved in the Project, such as, by way of example, the following: acts of God, the public enemy, or any governmental or military entity.

### **3. IGCC Rider Implementation.**

In recognition of some uncertainty as to the actual In-Service Operational Date of the Project and in effort to restart the IGCC Rider in a reasonable manner, the Settling Parties agree as follows:

As part of the approval of this Settlement, the IGCC Construction Work In Progress ("CWIP") Rider (Standard Contract Rider No. 61) will be approved to allow CWIP recovery to begin immediately on and up to the Hard Cost Cap Project Costs, and any Additional AFUDC as provided for in Section 2. In the event this Settlement is approved prior to approval of the IGCC-8 CWIP Rider proceeding, then CWIP recovery shall begin on Construction Costs amounts approved through the IGCC-6 CWIP Rider (which are less than the Hard Cost Cap), and recovery of CWIP for Construction Costs amounts over the IGCC-6 CWIP Rider amount (up to the Hard Cost Cap Project Costs and Additional AFUDC) will begin upon approval of the IGCC-8 CWIP Rider proceeding (expected in the September/October 2012 timeframe).

The Settling Parties agree that in IGCC-9 (to be filed in approximately May 2012), Duke Energy Indiana's proposed tariffs will not include costs of post-in-service Project depreciation or O&M costs (or property taxes) for inclusion in the IGCC-9 Rider (other than operating costs for items that have been included in previous Rider filings). Thus, the IGCC-9 filing will reflect financing costs (CWIP), but no post-in-service depreciation or O&M costs (or property taxes). Rather, in IGCC-10 (to be filed in approximately November 2012), Duke Energy Indiana will begin recovering post-in-service Project depreciation and O&M costs (and property tax expenses) on a projected basis for a six-month period. Duke Energy Indiana will defer the actual depreciation and O&M costs (and property tax expenses) incurred for all months from the In-Service Operational Date until the effective date of IGCC-10 rates. At the time of the next IGCC Rider filing (or general base rate case filing) after the filing of IGCC-10, Duke Energy Indiana will recover the deferred amount (without carrying costs) over a three-year period either through the IGCC Rider or through inclusion in base retail electric rates.

### **4. Retail Electric Rate Case Moratorium.**

Except in the case of an emergency pursuant to Ind. Code § 8-1-8-113, Duke Energy Indiana agrees that it will not file for an increase in its basic rates and charges for retail electric service prior to March 2013, and that no increase to its basic rates and charges for retail electric service as a result of a final order in a retail electric base rate case filing shall be implemented

prior to April 1, 2014. This base rate case moratorium applies only to retail electric base rate cases, and not to other requests by Duke Energy Indiana for accounting deferrals, creation of regulatory assets or liabilities, or creation of new or modification of existing retail rate riders.

The non-Duke Settling Parties agree not to oppose any request by Duke Energy Indiana to zero-out the IGCC Rider and include the IGCC plant (up to the Hard Cost Cap Project Costs, plus Additional AFUDC as permitted by this Settlement), O&M, depreciation, and property taxes in base rates at the time of its next retail electric base rate case, consistent with past practice for capital riders; provided, however, that the Settling Parties may challenge the specific amounts of O&M, depreciation, and property taxes to be included in base rates.

**5. Updated Depreciation Rates (plant except IGCC).**

A. Plant Other Than IGCC. Duke Energy Indiana agrees to update its non-IGCC depreciation rates for production, transmission, distribution and general plant and equipment as submitted in Cause No. 43114-IGCC4S1 proceeding. The Settling Parties agree not to challenge these new depreciation rates including the negative net salvage values. If the IURC approves this Settlement, the depreciation rate changes as referenced in Petitioner's Exhibits UU, VV, and WW, including sub-exhibits, in IURC Cause No. 43114-IGCC4S1, will be made effective and retail electric customers will begin receiving the approximately \$35 million retail jurisdictional annual credit for these depreciation rate changes through the IGCC Rider beginning the first full calendar month after the date of the order in Cause No. 43114-IGCC4S1, and ending upon the implementation of new retail base rates that reflect new depreciation rates, as discussed below.

Duke Energy Indiana agrees that, if it files for an increase in its base retail electric rates prior to the end of 2013, Duke Energy Indiana will request the continued application and approval of the depreciation rates approved in the depreciation study presented in Cause No. 43114-IGCC4S1; provided, however, that in such base rate case, Duke Energy Indiana shall have the right to propose updates to these depreciation rates and its depreciation study for any material changes in law, regulation, or accounting rules, or material changes to the Duke Energy Indiana system, including but not limited to, impacts from any decisions to accelerate the retirement of any generating assets, new environmental rules, new plant additions (including the IGCC Project), and the accelerated depreciation change as addressed below.

The Settling Parties agree not to oppose or present evidence regarding appropriate depreciation rates or net salvage values in any such Duke Energy Indiana retail electric base rate case filed prior to 2014, except as may be necessary to challenge any updates proposed by Duke Energy Indiana. Duke Energy Indiana reserves the right to file new depreciation rates for any retail electric base rate case filed after 2013, and the non-Duke Settling Parties retain the right to object to such new, post-2013 proposed depreciation rates and net salvage values.

B. Qualified Pollution Control Property Subject to Accelerated Depreciation. The Settling Parties agree that as of the first calendar month after the date of an Order approving this Settlement, Duke Energy Indiana may adjust its depreciation rates to reflect the use of normal, straight line depreciation lives for the qualified pollution control equipment, which rates are currently approved on an accelerated basis. Duke Energy Indiana's retail rates will not be changed to reflect this accounting adjustment to depreciation rates until the effective date of an order in the next-filed retail electric base rate case. At that time, revenue requirements will be modified to reflect the change from accelerated to normal lives for such qualified pollution control equipment, resulting in an estimated \$32 million decrease in annual retail depreciation expense.

**6. Deferred Taxes.**

Duke Energy Indiana agrees to include, consistent with traditional Indiana ratemaking, deferred taxes in the capital structure used in its IGCC Rider, on a prospective basis, beginning with the effective date of the rider approved by an IURC Order that restarts the IGCC Rider. The Settling Parties agree that any bonus depreciation treatment applicable to the IGCC Project will be accorded normal ratemaking treatment, *i.e.*, any deferred taxes created by such bonus depreciation will be reflected in Duke Energy Indiana's capital-related rate riders and base rate case filings on an actual basis.

**7. Potential Recoveries from Vendors/Contractors; Intellectual Property Benefits.**

A. The Settling Parties recognize and agree that Duke Energy Indiana may have rights, claims and valid causes of action against Bechtel, GE, or other Project vendors or contractors with respect to the Project, and agree that in light of this Settlement, Duke Energy Indiana shall be entitled to retain any and all benefit from any amounts received from Bechtel, GE, or other Project vendors or contractors associated with the cost and quantity estimates, design, construction, start-up, testing, etc. of the Project, whether such benefit stems from agreement, arbitration, mediation, litigation, settlement, etc., and Duke Energy Indiana agrees to bear all costs associated with pursuing said causes of action. The Settling Parties agree not to affirmatively oppose or undermine in any way Duke Energy Indiana's pursuit of claims against GE, Bechtel, or other Project vendors or contractors.

B. Duke Energy Indiana shall retain any intellectual property benefits related to the IGCC Project.

**8. Government Funding and Tax Incentives; Project Byproducts.**

Retail electric customers will receive 100% of the applicable retail jurisdictional share of any Project-specific funding received from federal, state, or local governmental authorities, such as incentive tax credits and property tax credits.

Retail electric customers will receive 100% of the applicable retail jurisdictional share of any net byproduct or co-product revenues from the Project.

**9. Attorneys' Fees and Reimbursements; Other Funding Commitments.**

Duke Energy Indiana agrees to make the following payments, out of shareholders' funds, for attorneys' fees, litigation expenses, and other funding commitments, within 30 days of an IURC order (or as otherwise specified below) approving this Settlement (unless this Settlement is voided in its entirety pursuant to section 10 below):

A. A payment to the attorneys representing the Duke Energy Indiana Industrial Group of attorneys' fees in the amount of \$11.7 million and of expenses in the amount of \$600,000 for this Cause No. 43114-IGCC4S1, with implementation details in a separate Attorneys Fees and Expenses Implementation Agreement.

B. A payment to Nucor Steel-Indiana of between \$800,000 and \$1 million for certain fees and expenses incurred for this Cause No. 43114-IGCC4S1, with implementation details in a separate Attorneys Fees and Expenses Implementation Agreement.

C. A payment to the OUCC, not to exceed a total of \$300,000, for reimbursement of certain outside litigation expenses related to this Cause No. 43114-IGCC4S1.

D. A contribution of \$2 million to the Indiana Utility Ratepayer Trust.

E. A contribution of \$3.5 million to the Indiana Low Income Home Energy Assistance Program ("LIHEAP") fund, to be funded over a five-year period and to be used solely for Duke Energy Indiana retail customers (*i.e.*, the Helping Hand Fund).<sup>4</sup>

F. A contribution of \$1 million to establish a fund to effect the collaborative development of a clean energy initiative by the OUCC and Duke Energy Indiana, and to be administered by a suitable third party for the benefit of Duke Energy Indiana retail customers. The OUCC and Duke Energy Indiana acknowledge that this contribution may take longer than 30 days to set up and fund.

**10. Other.**

A. The Settling Parties agree that any subject to refund designations or similar language in the order in Cause No. 43114-IGCC-4 and any subsequent IGCC Rider orders approved prior to the date of an IURC order in this docket should be removed once this Settlement is effective.

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<sup>4</sup> For the LIHEAP contributions the first \$700,000 installment shall be made within 30 days of an IURC order approving this Settlement, with the four remaining \$700,000 installments to be made in 2013, 2014, 2015 and 2016.

B. The Settling Parties agree that the evidence to be submitted in support of this Settlement, along with the evidence of record previously submitted in this Cause, together constitute substantial evidence to support this Settlement and provide a sufficient evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement, as filed. The Settling Parties shall prepare and file with the Commission as soon as reasonably possible, testimony and proposed order(s) in support of and consistent with this Settlement.

C. This Settlement is a complete, interrelated package that is intended to resolve all issues related to the IGCC Project Construction Costs (and associated AFUDC) including without limitation, all issues that were addressed or could have been addressed in Phase I and Phase II of Cause No. 43114-IGCC4S1, including but not limited to all claims of imprudence, fraud, concealment and gross mismanagement, as well as all issues concerning ex parte communications, improper conduct, undue influence, appearances of impropriety, or related issues. The Settling Parties agree to oppose or not support any attempt to create additional proceedings or phases of IURC proceedings to further examine the IGCC Project Construction Costs, associated AFUDC, fraud, concealment, gross mismanagement or ex parte communications, improper conduct, undue influence, appearances of impropriety, or related issues.

D. (1) The Settling Parties will not appeal or seek rehearing, reconsideration or a stay of a Final Order approving this Settlement in its entirety or without change or condition(s) unacceptable to any adversely affected Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement).

(2) The Settling Parties agree to support in good faith the terms of this Settlement before the IURC and further agree not to take any positions adverse to or inconsistent with the Settlement or any adverse positions against each other with respect to the Settlement or the subject matters herein, before any appellate courts, and if necessary, on rehearing, reconsideration, or remand before the IURC.

(3) The Settling Parties also agree to support or not oppose this Settlement in the event of any request for a stay by a person not a party to this Settlement or if this Settlement is the subject matter of any other state proceeding.

(4) The Settling Parties shall remain bound by the terms of this Settlement Agreement and shall continue to support all the terms of the Settlement on appeal, remand, reconsideration, etc., even if the IURC rejects the Settlement. However, in the event that the Settlement is rejected by the IURC and such rejection is ultimately upheld on rehearing, reconsideration, and/or appeal, at the point when all such proceedings and appeals are complete, this Settlement Agreement shall become void and of no further effect (except for provisions which have already been fully implemented or which are explicitly stated herein to survive termination/voiding).

(5) If the IURC approves the Settlement in its entirety, or approves the Settlement with modifications that are not unacceptable to affected Settling Parties, and such

IURC approval is ultimately vacated or reversed on appeal, the Settling Parties agree to support the terms of this Settlement in any remand proceedings before the IURC (as well as any subsequent appeals) to the extent possible under applicable law. In such situation, the Settling Parties agree not to take any positions adverse to or inconsistent with the Settlement or any adverse positions against each other with respect to the Settlement or the subject matters herein, on remand before the IURC. To the extent that the IURC and/or appellate courts ultimately and finally reject this Settlement, any provisions of this Settlement that remain to be implemented will then become void and of no further effect, unless explicitly stated herein.

E. The positions taken by the Settling Parties in this Settlement shall not be deemed to be admissions by any of the Settling Parties and shall not be used as precedent, except as necessary to implement the terms of this Settlement. This provision shall survive termination/voiding of this Agreement.

F. The Settling Parties will support this Settlement before the Commission and request that the Commission expeditiously accept and approve the Settlement. As stated above, this Settlement is a complete, interrelated package, and the Settling Parties believe that it should be accepted in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party.

G. The Settling Parties will jointly move for leave to re-open the record in this Cause and to file this Settlement and testimony in support of this Settlement. Such testimony in support will be offered into evidence without objection by any Settling Party and the Settling Parties hereby waive cross-examination of each others' witnesses. The Settling Parties propose to submit this Settlement and evidence conditionally, and if the Commission fails to approve this Settlement in its entirety without any change or with condition(s) unacceptable to any adversely affected Settling Party, the Settlement and supporting evidence may be withdrawn and the Commission will continue to proceed to decision in this Cause, without regard to the filing of this Settlement.

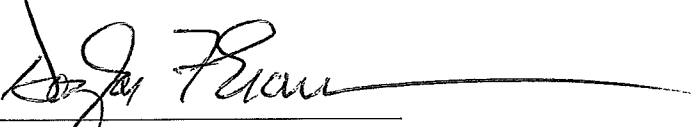
H. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise. This provision shall survive termination/voiding of this Agreement.

I. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement on behalf of their designated clients, and their successors and assigns, who will be bound thereby.

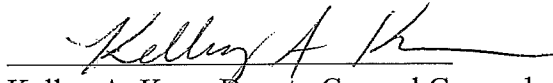
J. The provisions of this Settlement shall be enforceable by any Settling Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

K. This Settlement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

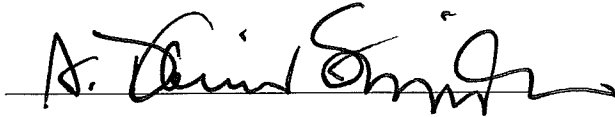
ACCEPTED AND AGREED TO THIS 30<sup>th</sup> DAY of APRIL 2012:



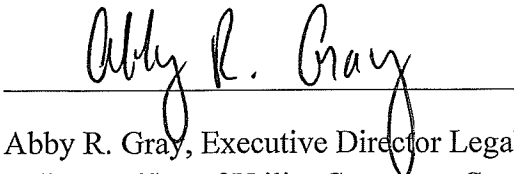
Douglas F. Esamann, President  
Duke Energy Indiana



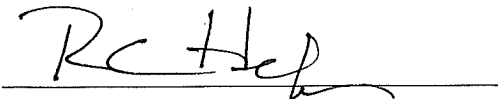
Kelley A. Karn, Deputy General Counsel  
Attorney for Duke Energy Indiana



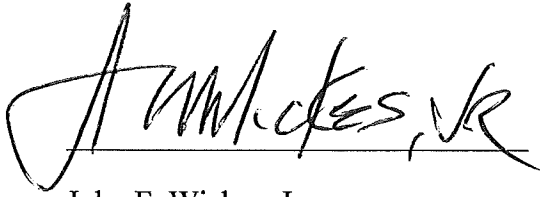
A. David Stippler, Consumer Counselor  
Indiana Office of Utility Consumer Counselor



Abby R. Gray, Executive Director Legal Operations  
Indiana Office of Utility Consumer Counselor

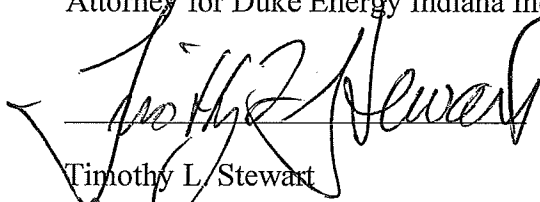


Randall C. Helmen, Chief Deputy Consumer Counselor  
Indiana Office of Utility Consumer Counselor



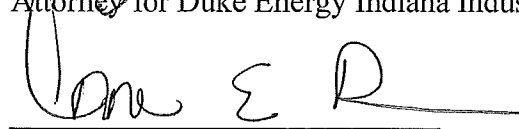
John F. Wickes, Jr.

Attorney for Duke Energy Indiana Industrial Group



Timothy L. Stewart

Attorney for Duke Energy Indiana Industrial Group



Anne E. Becker

Attorney for Nucor Steel-Indiana



**“Final Completion”** shall be deemed to have occurred upon the satisfaction of all of the following conditions:

- (a) Substantial Completion shall have occurred;
- (b) the performance of the Work shall be one hundred percent (100%) complete (other than Work that by its nature cannot be completed until after Final Completion (e.g., warranty Work)), including the Punch List Work and delivery of all Documentation that the Seller is required to deliver to the Buyer pursuant to this Contract;
- (c) either (i) the Equipment shall have satisfied all Performance Guarantees or (ii) the Seller shall have paid to the Buyer all liquidated damages for failure to satisfy the LD Performance Guarantees as required by Section 2.9;
- (d) there shall exist no Event of Default and no event which, with the passage of time or the giving of notice or both, would be an Event of Default; and
- (e) the Seller shall have delivered to the Buyer a certificate signed by the Seller certifying that all of the preceding conditions in this Section have been satisfied.

**“Substantial Completion”** shall be deemed to have occurred upon the satisfaction of all of the following conditions:

- (a) Delivery of all GEP Equipment shall have occurred;
- (b) the performance of the Work shall be complete (other than Work that by its nature cannot be completed until after Substantial Completion (e.g., warranty Work)), with the exception of the Punch List;
- (c) the Facility shall have satisfied the Minimum Performance Guarantees and the Make-Right Performance Guarantees;
- (d) the Seller shall have delivered to the Buyer all Documentation that the Seller is required to deliver to the Buyer pursuant to this Contract, with the exception of the Punch List;
- (e) the Seller shall have provided all training required by Exhibit S, with the exception of the Punch List; and
- (f) the Seller shall have delivered to the Buyer a certificate signed by the Seller certifying that all of the preceding conditions in this Section have been satisfied.